

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

GREGORY DUANE BAYLESS,)
Plaintiff,)
v.) No. 2:19-cv-00467-JPH-MJD
NICK BEAGLE, Major; et al.,)
Defendants.)

Order on Plaintiff's Second Amended Complaint and Directing Further Proceedings

On September 24, 2019, Indiana Department of Correction inmate Gregory Duane Bayless brought this 42 U.S.C. § 1983 action against jail employees in Decatur County, Indiana, for an incident occurring while he was a pretrial detainee. Dkt. 2. His complaint was dismissed for failure to state a claim upon which relief can be granted but he was given time to file an amended complaint with viable claims. Dkt. 4. He did so on October 24, 2019. Dkt. 6. Following screening, claims against four jail employees for deliberate indifference to serious medical needs were allowed to proceed, dkt. 11. The defendants answered on April 7, 2020, dkt. 18, and a pretrial schedule was filed on May 12, 2020, dkt. 19. Pursuant to that schedule, amended pleadings were due June 25, 2020. *Id.* at 3 ¶ B.

A second amended complaint was docketed on June 26, 2020, but it contains a certificate of service date of June 25, 2020. Regardless of the operative filing date, because the defendants have already responded to the complaint, Mr. Bayless cannot file an amended complaint (or second amended complaint) without leave of court or consent of the opposing parties. Fed. R. Civ. P. 15(a)(2). No motion for leave to file a second amended complaint is on file, and the second

amended complaint does not state that all defendants have agreed to the filing. The Seventh Circuit has recently emphasized that all parties, *pro se* and represented by counsel, must comply with procedural rules. *Bowman v. Korte*, ___ F.3d ___, 2020 WL 3455792 (7th Cir. June 25, 2020) (noting repeated principle that *pro se* parties must follow procedural rules) (citing *Collins v. Illinois*, 554 F.3d 693, 697 (7th Cir. 2009) (stating that “[a]s we have repeatedly held, even *pro se* litigants must follow procedural rules”); *Cady v. Sheahan*, 467 F.3d 1057, 1061 (7th Cir. 2006) (noting that “the Supreme Court has made clear that even *pro se* litigants must follow rules of civil procedure,” citing *McNeil v. United States*, 508 U.S. 106, 113 (1993).

This Court also notes that the incident giving rise to Mr. Bayless's claims arose December 15, 2017, more than two and a half years before his second amended complaint was docketed.

Accordingly, the Court directs the following:

1. The defendants do not have to file an answer to the tendered second amended complaint until further order of the Court.
2. Mr. Bayless has until **July 24, 2020** to file a motion for leave to file a second amended complaint addressing why the interests of justice compel leave be granted to file the second amended complaint.
3. The defendants have **fourteen days after** service of the motion for leave to file a second amended complaint to file a response.
4. Mr. Bayless may file a reply to the defendants' response **no later than ten days** following service of the response on him.

The failure to file a motion for leave to file a second amended complaint no later than **July 24, 2020**, will result in the second amended complaint being stricken and this case continuing to proceed on the amended complaint filed on October 24, 2019.

SO ORDERED.

Date: 7/7/2020

James Patrick Hanlon

James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

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